IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

WP(C).No. 27132 of 2006(E)

PETITIONER:

K.M. RAMACHANDRAN, S/O. CHANGERU
MADATHIL HOUSE, VENGARA, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR
SRI.JIJO PAUL

RESPONDENTS:

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1. THE ASSISTANT EXCISE COMMISSIONER,
MALAPPURAM.

2. THE EXCISE INSPECTOR,
NILAMBUR EXCISE RANGE, MALAPPURAM DISTRICT.

3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF EXCISE, TRIVANDRUM.

BY G.P. SRI.I.V.PROMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.27132 of 2006

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Dated this the 30th day of November, 2006.

JUDGMENT

Heard petitioner and the Government Pleader. The petitioner is challenging Ext.P7 order issued under Section 67(B)(2) of the Abkari Act confiscating his vehicle KL-10E-8760 involved in an abkari offence. Even though statutory appeal is provided against the order, the petitioner filed the W.P. on the ground that the order is arbitrary and issued without considering Ext.P6 judgment wherein this court has exonerated the petitioner from the crime charged for the same offence at the initial stage itself. The petitioner's case is that apart from being registered owner of the vehicle, the Department has not made any allegation or given any finding in Ext.P7 that the petitioner was involved in transport of liquor in the truck or that he was a beneficiary of the transaction. On the other hand, it is the finding of this court in Ext.P6 judgment based on confession statement by the driver and cleaner that petitioner has nothing to do with the transport of liquor which led to seizure of the vehicle. Even though statute presumes liability on the owner if he has not taken precautionary steps to prevent commission of an abkari offence with the vehicle, the Assistant Commissioner has not come to any conclusion about the lapses committed by the petitioner in preventing the offence. The only preventive step that a registered owner can take is to provide for deterrant action on the employees engaged in the vehicle, if found to be involved in abkari offence. It is

reported that the driver and the cleaner charge sheeted were convicted and were dismissed from service by the petitioner. I do not think any other step could be taken by the petitioner to prevent use of the vehicle for abkari offence. Since it is clearly established in Ext.P6 judgment that petitioner has nothing to do with the transport of liquor, W.P. is allowed quashing Ext.P7 with direction to respondents 1 and 2 to release the vehicle to the petitioner without any delay.

C.N.RAMACHANDRAN NAIR
Judge

pms